

# Customs Bulletin

Regulations, Rulings, Decisions, and Notices  
concerning Customs and related matters



## and Decisions

of the United States Court of Appeals for  
the Federal Circuit and the United  
States Court of International Trade

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*This issue contains:*

U.S. Customs Service

T.D. 90-82

T.D. 90-70 (Correction)

THE DEPARTMENT OF THE TREASURY  
U.S. Customs Service

## NOTICE

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# U.S. Customs Service

## *Treasury Decisions*

19 CFR Part 122

(T.D. 90-82)

[RIN 1515-AA97]

### AMENDMENT TO THE CUSTOMS REGULATIONS REGARDING ACCESS TO CUSTOMS SECURITY AREAS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

**SUMMARY:** This document amends the Customs Regulations regarding access to Customs security areas to grant discretion to the district director of Customs to waive the Airport Security Area Bond for State or local government related agencies which operate airports. Such agencies must agree to comply with all applicable security regulations. This amendment does not relieve such agencies of the duty to comply with all other security provisions. In addition, the restructuring of these provisions in a separate subpart will clarify the responsibilities of employers who employ persons to work in security areas of airports handling international commerce.

**EFFECTIVE DATE:** October 22, 1990.

**FOR FURTHER INFORMATION CONTACT:** Samuel McLinn, Office of Inspection and Control (202-566-2140).

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

Section 122.14 (19 CFR 122.14) is being revised as a separate subpart governing security areas at airports handling international arrivals, with minor editorial changes. These provisions are presented in essentially the same order as the paragraphs of § 122.14, with the addition of the airport security bond waiver provision cited below. The format of the subpart clarifies the Customs security area requirements and procedures by making the information contained in the regulations easier to locate and understand.

In a final rule published as T.D. 86-174 in the Federal Register of September 12, 1986 (51 FR 32448), Customs set forth provisions governing

an identification system for all employees whose duties require access to Customs security areas at airports handling international air commerce. These provisions specified that unescorted access to security areas of airports accommodating international air commerce would be restricted to authorized employees for whom employers had conducted a background check and concluded that the presence of these employees would neither endanger the revenue nor threaten the security of the area. In response to frequent violations of these regulations, Customs amended § 122.14, Customs Regulations (19 CFR 122.14), by T.D. 88-46, 53 F.R. 29231, effective September 2, 1988, to require employers to post a bond sufficient to pay liquidated damages in the event of security regulation violations by the employers or their employees. Customs employees and employees of State or local government related agencies operating in some airports, however, frequently work so closely in insuring airport security that the cooperative nature of the relationship and the scrutiny under which such employees of these agencies perform their duties in Customs security areas combine to make the posting of bonds unnecessary for these agencies.

This document amends that portion of § 122.14(c), which under this final rule becomes § 122.182(c), to allow the district director of Customs discretion to waive the requirement for an Airport Security Area Bond from such State or local government related agencies to support applications for identification cards of agency employees who, regardless of title, the agency certifies via a background check to be an agency employee. The waiver of the bond requirement does not exempt such agencies or agency employees from filling out applications, completing background checks, wearing identification cards, strips, or seals or complying with all other applicable security regulations. The only discretion permitted the district director is the waiver of the bond requirement; further, the district director specifically retains the right to require a bond.

#### INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE PROVISIONS

Inasmuch as these regulations grant a benefit in permitting the district director to waive the requirement for a bond in certain cases and otherwise merely restructure existing regulations without change, it is in the public interest to make the regulatory changes as soon as possible. Accordingly, notice and public procedure are unnecessary pursuant to 5 U.S.C. 553(b)(B). For the same reasons, a delayed effective date is not required, pursuant to 5 U.S.C. 553(d)(3).

#### EXECUTIVE ORDER 12291

Because this amendment does not meet the criteria for a "major rule" within the meaning of Executive Order 12291, a regulatory impact analysis is not required.

#### REGULATORY FLEXIBILITY ACT

Because no notice of proposed rulemaking is required by 5 U.S.C. 553 or any other statute the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply to the Amendment.

## DRAFTING INFORMATION

The principal author of this document was Michael Smith, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

## LIST OF SUBJECTS IN 19 CFR PART 122

Air transportation, Airports, Airport Security.

## AMENDMENT TO THE REGULATIONS

Accordingly, Part 122, Customs Regulations (19 CFR Part 122) is amended as follows:

## PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644, 49 U.S.C. App. 1509.\* \* \*

2. Section 122.14 is removed and reserved.

3. Subpart S consisting of sections 122.181 through 122.188 is added to read as follows:

## SUBPART S—ACCESS TO CUSTOMS SECURITY AREAS

## Part

- 122.181 Definition of Customs security area.
- 122.182 Security provisions.
- 122.183 Denial of access.
- 122.184 Change of identification.
- 122.185 Report of loss or theft of identification cards.
- 122.186 Presentation of identification by other person.
- 122.187 Revocation or suspension of access.
- 122.188 Issuance of temporary identification.

## SUBPART S—ACCESS TO CUSTOMS SECURITY AREAS

**§ 122.181 Definition of Customs security area.**

For purposes of this section, the term "Customs security area" means the Federal inspection services area at any airport accommodating international air commerce designated for processing passengers, crew, their baggage and effects arriving from foreign countries, as well as the aircraft deplaning and ramp area and other restricted areas designated by the district director of Customs. These areas will be posted as restricted to the extent possible and are established for the purpose of prohibiting unauthorized entries or contact with persons or objects.

**§ 122.182 Security provisions.**

(a) *Identification cards required.* With the exception of all Federal and uniformed State and local law enforcement personnel, all persons located at, operating out of, or employed by any airport accommodating international air commerce or its tenants or contractors, including air carriers, who have unescorted access to the Customs security area, must openly display or produce upon demand an approved identification card,

strip, or seal issued by Customs. The approved identification card, strip, or seal shall be in the possession of the person in whose name it is issued whenever the person is in the Customs security area. The identification card, strip or seal remains the property of Customs, and any bearer must immediately surrender it upon demand by any authorized Customs officer.

(b) *Employers responsibility and liability.* Employers operating in Customs airport security areas shall advise all employees of the provisions of the Customs regulations relative to those areas, require employees to familiarize themselves with those provisions and insure employee compliance. The employer shall also advise the district director of any changes of employment pursuant to § 122.182(g). The failure to comply with these regulations shall be considered a default of the conditions of the employer's bond, as hereafter specified, and shall make the employer liable for liquidated damages as specified in its bond.

(c) *Application and bond.* An application for an approved identification card, strip, or seal, as required by this section, shall be filed by the applicant with the district director on Customs Form 3078. The application requirement applies to all employees required to display an approved identification card by this section, regardless of the length of their employment. The application shall be supported by the bond of the applicant's employer or principal on Customs Form 301 containing the bond conditions set forth in §§ 113.62, 113.63, or 113.64 of this chapter, relating to importers or brokers, custodians of bonded merchandise, or international carriers. If the applicant's employer is not the principal on a Customs bond on Customs Form 301 for one or more of the activities stated above, the application shall be supported by an Airport Customs Security Area Bond, as set forth in Appendix A of Part 113 of this chapter. This bond may be waived, however, for State or local government-related agencies in the discretion of the district director. Waiver of this bond does not relieve any such agency or its employees from compliance with all other provisions of this subpart.

(d) *Background check.* For employees hired on or after November 1, 1985, an authorized official of the employer shall attest in writing that a background check has been conducted on the applicant, to the extent allowable by law. The background check shall include, at a minimum, references and employment history, to the extent necessary to verify representations made by the applicant relating to employment in the preceding 5 years. For employees hired before November 1, 1985, the authorized official of the employer need only attest to the fact that the employee was hired before that date. The authorized official of the employer shall attest that, to the best of his knowledge, the applicant meets the conditions necessary to perform functions associated with employment in the Customs security area. The fingerprints of the applicant may be required on fingerprint card form FD-258 at the time of the filing of the application. Proof of citizenship or authorized residency and a photograph may also be required. Additionally, the application may be investi-

gated by Customs and a report prepared concerning the character of the applicant. Records of background investigations conducted by employers must be retained for a period of one year following cessation of employment and made available upon request of the district director.

(e) *Law Enforcement officers and other governmental officials.* Law enforcement officers and other Federal, State, or local officials whose official duties require access to the Customs security area may request from the district director the issuance of an approved identification card, strip, or seal. They need not make application nor submit to background checks for security area access. An Airport Customs Security Area Bond is not required.

(f) *Replacement identification.* A new identification card, strip or seal may be obtained from the district director in the following circumstances, without the completion of an additional application, except as determined by the district director in his discretion:

- (1) A change in employee name or address;
- (2) A change in the name or ownership of the employing company;
- (3) A change in employer or airport authority identification card format; or
- (4) Loss or theft of the identification card, strip, or seal (see § 122.185 of this Part).

(g) *Surrender of cards.* Where the employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance due to a change in duties, termination of employment, or other reason, the employer shall notify the district director in writing, at the time of such change, and shall return the identification card, strip, or seal to Customs. The notification shall include information regarding the disposition of the approved identification card, strip, or seal of the employee who no longer requires access. A summary of such information shall be filed quarterly or at such shorter intervals as established by the district director. If the employee returns to duties in the Customs security area at the airport for the same employer within 1 year, a Customs Form 3078, as required in § 122.182(c), need not be submitted.

#### **§ 122.183 Denial of access.**

(a) *Grounds for denial.* An approved identification card, strip, or seal shall not be issued to any person whose employment necessitates access to the Customs security area and whose access will, in the judgment of the district director, endanger the revenue or the security of the area. Grounds for denial of access shall include but are not limited to:

(1) Any cause which would justify suspension or revocation of the identification card, strip, or seal under the provisions of § 122.187 of this Part; or

(2) Evidence of a pending or past investigation which establishes criminal, or dishonest conduct, or a verified record of such conduct.

(b) *Notification of denial.* The district director shall give written notification to, any person whose application for access to the Customs security area has been denied, fully stating the reasons for denial and setting

forth specific appeal procedures. The employer shall be notified in writing that the applicant has been denied access to the area and that the detailed reasons for the denial have been furnished to the applicant. Detailed reasons regarding the denial, however, shall not be furnished to the employer by Customs.

(c) *Appeal of denial.* The denial will be final unless the applicant files with the district director a written notice of appeal within 10 days following receipt of the notice of denial. The notice of appeal shall be filed in duplicate and shall set forth the response of the applicant to the statement of the district director. The district director shall render his decision on the appeal to the applicant within 30 days of receipt of the notice of appeal.

(d) *Further appeal of denial.* Where the application on appeal is denied by the district director, the applicant may file a further written notice of appeal to the Commissioner of Customs within 10 days of receipt of the district director's decision on the appeal. The further notice of appeal shall be filed in duplicate and shall set forth the response of the applicant to the decision of the district director. The Commissioner or his designee shall review the appeal and render a written decision. The final decision shall be transmitted to the district director and served by him on the applicant.

#### **§ 122.184 Change of identification.**

The identification card, strip, or seal may be removed from the employee by the district director where, for security reasons, a change in the nature of the identification is necessitated.

#### **§ 122.185 Report of loss or theft of identification cards.**

The loss or theft of an identification card, strip, or seal shall be promptly reported in writing by the employee to the district director. The card, strip, or seal may be replaced, as provided in § 122.182(f) of this Part.

#### **§ 122.186 Presentation of identification by other person.**

If an approved identification card, strip, or seal is presented by a person other than the one to whom it was issued, the identification card, strip, or seal shall be removed and destroyed. An approved identification card, strip, or seal may be removed from an employee by any Customs officer designated by the district director.

#### **§ 122.187 Revocation or suspension of access.**

(a) *Grounds for revocation or suspension of access.* The district director may revoke or suspend access to the Customs security area and demand that the identification card, strip, or seal be surrendered in the following instances:

(1) The approved identification card, strip, or seal was obtained through fraud or the misstatement of a material fact;

(2) The employee is convicted of a felony or convicted of a misdemeanor involving theft, smuggling, or any theft connected crime;



(3) The employee permits the approved identification card, strip, or seal to be used by any other person or refuses to openly display or produce it upon the proper demand of a Customs officer;

(4) The continuation of privileges would, in the judgment of the district director, endanger the revenue or security of the area;

(5) The employee refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation;

(6) The bond required by § 122.182(c) of this Part is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

(7) The employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance because of a change in duties, termination of employment, or other reason.

(b) *Notice.* The district director shall suspend or revoke access to the Customs security area by giving notice of the proposed action in writing to the employee, with a copy of the notice to the employer. The notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the privilege and shall be final and conclusive upon the employee, unless a written notice of appeal as provided in paragraph (c) of this section is filed with the district director.

(c) *Appeal.* The employee may file a written notice of appeal of the revocation or suspension within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate and shall set forth the response of the employee to the statement of the district director. A hearing may be requested in the notice of appeal.

(d) *Hearing.* If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner, or his designee, within 30 days following the request. The employee shall be notified of the time and place of the hearing at least 5 days before the hearing. The employee may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented. Both parties shall have the right of cross-examination. A stenographic record of the proceedings shall be made upon request and a copy furnished to the employee. At the conclusion of the proceedings or review of a written appeal, the hearing officer or the district director shall promptly transmit all papers and the stenographic record to the Commissioner or his designee, together with the recommendation for final action. If neither the employee nor his attorney appear for a scheduled hearing, the hearing officer shall record that fact, accept any appropriate testimony, and conclude the hearing. The hearing officer shall promptly transmit all papers, together with his recommendations, to the Commissioner or his designee.

(e) *Additional written views.* Within 10 days after delivery of a copy of the stenographic record of the hearing to the Commissioner, or his designee,

nee, the employee may submit to the Commissioner, or his designee, additional written views and arguments on matters in the record.

(f) *Decision.* After consideration of the recommendation of the hearing officer or the district director, the Commissioner, or his designee, shall render a written decision. The decision shall be transmitted to the district director and served by the district director on the employee.

**§ 122.188 Issuance of temporary identification.**

(a) *Conditions for issuance.* When an approved identification card, strip, or seal is required under § 122.182(a) of this Part and the district director determines that the application cannot be administratively processed in a reasonable period of time, an employer may, upon written request, be issued a temporary identification card, strip, or seal for his employee. The employer must satisfy the district director that a hardship would result if the request is not granted. Surety on the bond, as required by § 122.182(c), may be waived in the discretion of the district director but only for the period of the temporary identification card and its renewal period.

(b) *Validation period.* The temporary identification card, strip, or seal shall be valid for a period of 60 days. The district director may renew the temporary identification card, strip, or seal for additional 30 day periods where the circumstances under which the temporary identification card, strip, or seal was originally issued continue to exist. The temporary identification card, strip, or seal shall be destroyed by the district director when the permanent approved identification card, strip, or seal is issued, or the privileges granted thereby are withdrawn.

(c) *Temporary employees and official visitors.* The provisions of this section shall also apply to temporary employees and official visitors requiring access to the Customs security area. In the case of temporary employees, the identification card, strip, or seal shall be valid for a period of 30 days. In the case of official visitors, the temporary identification card, strip, or seal shall be valid for the day of issuance only. Temporary employee and official visitor identification cards, strips, or seals are renewable for periods equal to their original period of validity.

(d) *Revocation of denial and access.* The temporary identification card, strip, or seal may be revoked and access to the Customs security area denied at any time if the holder of the temporary identification card, strip, or seal refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation, or if, in the judgment of the district director, continuation of the privileges granted thereby would endanger the revenue or pose a threat to the Customs security area.

MICHAEL H. LANE,

*Acting Commissioner of Customs.*

Approved: October 4, 1990.

JOHN P. SIMPSON,

*Acting Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 22, 1990, 55 FR 42556]

## 19 CFR Part 10

(T.D. 90-70)

**CUSTOMS REGULATIONS AMENDMENTS RELATING TO THE  
STEEL VOLUNTARY RESTRAINT ARRANGEMENT PROGRAM;  
CORRECTION****AGENCY:** U.S. Customs Service, Department of the Treasury.**ACTION:** Interim rule; correction.**SUMMARY:** A document was published in the Federal Register (55 FR 37701) on September 13, 1990, setting forth interim regulations regarding the entry requirements applicable to imported steel products under the steel voluntary restraint arrangement program. This document corrects an error that appears in that document.**EFFECTIVE DATE:** September 13, 1990.**FOR FURTHER INFORMATION CONTACT:** Frank Crowe, Office of Trade Operations (202-566-9262).**SUPPLEMENTARY INFORMATION:****BACKGROUND**

A document was published in the Federal Register (55 FR 37701) on September 13, 1990, setting forth interim regulations regarding the entry requirements applicable to imported steel products under the steel voluntary restraint arrangement program. Included as § 10.323(d) was a requirement that, at the time of filing an application for admission of a covered steel product into a foreign trade zone, an application for privileged foreign status shall also be made for the steel product. This requirement was included in error and therefore should be removed. The effect of the removal of § 10.323(d) will be that imported steel products accompanied by the required export certificate or license may be admitted into a foreign trade zone in any status as may be appropriate under other existing requirements.

**CORRECTIONS**

1. On page 37702, third column, the last paragraph should be removed.
2. On pages 37703-37704, in § 10.323, paragraph (d) should be removed.

**Dated:** October 15, 1990.

**HARVEY B. FOX**  
*Director*

*Office of Regulations and Ruling.*

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The second is the fact that the system is not a static one, but a dynamic one, which is constantly changing and evolving.

The third is the fact that the system is not a closed one, but an open one, which is constantly interacting with the outside world.

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